



Federal Communications Commission
Washington, D.C. 20554
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In Reply Refer to:
1800B3-BSH/LAS

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**Re: AM Broadcast Auction 84
MX Group 84-39E**

New (AM), Santa Fe, New Mexico
Facility ID No. 160927
File No. BNP-20040128ART

New (AM), Fritch, Texas
Facility ID No. 161537
File No. BNP-20040130BKN

New (AM), Panhandle, Texas
Facility ID No. 160630
File No. BNP-20040129ABQ

**Applications for New AM Station
Construction Permits**

Dear Applicants:

We have before us three mutually exclusive ("MX") AM construction permit applications. Powell Meredith Communications Company ("Powell Meredith") proposes a new AM station at Santa Fe, New Mexico, La Promesa Foundation ("LPF") proposes a new AM station at Fritch, Texas, and Gerald Benavides ("Benavides") proposes a new AM station at Panhandle, Texas. As discussed below,

we find a dispositive preference for Benavides under Section 307(b) of the Communications Act of 1934, as amended¹ (the “Act”), and therefore direct Benavides to file his long-form application within 60 days of the date of this letter for a construction permit in Panhandle, Texas.

Background. In situations such as the one before us, the grant of an application would normally be resolved by a competitive bidding process.² However, in the *Broadcast First Report and Order*, the Commission determined that the competitive bidding procedure should be consistent with its statutory mandate under Section 307(b) of the Act to provide a “fair, efficient, and equitable” distribution of radio services across the nation. To this end, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications.³ The Commission also noted that the FM allotment priorities fulfill its obligation under Section 307(b), and would apply in making a Section 307(b) determination regarding mutually exclusive AM applications before auction.⁴

Discussion. As the Powell Meredith, LPF, and Benavides applications propose new AM stations for different communities of license, we will evaluate these three applications under Section 307(b) of the Act. There are currently ten radio stations licensed to Santa Fe, New Mexico. Consequently, the Powell Meredith proposal would be considered under priority (4), other public interest matters. The LPF and Benavides applications each propose a first local transmission service and claim priority (3) under the applicable allotment priorities. Under well-settled policy, the establishment of a first local service under priority (3) is preferred to a priority (4) proposal.

After careful consideration of the LPF and Benavides applications, we have determined that the Benavides proposal is entitled to a dispositive Section 307(b) preference. As noted, both LPF and Benavides propose a first local transmission service and claim priority (3) under the applicable allotment priorities. Where, as in this instance, listeners in each of the communities receive five or more aural services,⁵ the Commission has consistently based its decision on a straight population comparison and preferred the community with the larger population.⁶ We therefore find it in the public interest to give preference to a first local service to the larger community of Panhandle (with a 2000 U.S. Census population of 2,589 persons) over a first local service to the smaller community of Fritch (with a 2000

¹ 47 U.S.C. § 307(b).

² See *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses* (“*Broadcast First Report and Order*”), First Report and Order, 13 FCC Rcd 15920 (1998), *recon denied*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), *modified*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

³ *Broadcast First Report and Order*, 13 FCC Rcd at 15964-65.

⁴ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 56 RR 2d 1568 (Rev. Bd. 1984).

⁵ Both Fritch and Panhandle are well-served by at least five full-time aural services. See *Family Broadcasting Group*, Decision, 93 FCC2d 771 (Rev. Bd.), *rev. denied*, Order, FCC 83-559 (1983) (Commission considers areas that receive five or more services to be abundantly served).

⁶ See, e.g., *Cameron and Hackberry, Louisiana*, Report and Order, 20 FCC Rcd 16267 (MB 2005) (decision based on population difference of 266 people); *Rose Hill, North Carolina*, Memorandum Opinion and Order, 15 FCC Rcd 10739 (MMB 2000) (decision based on population difference of 370 people); *Blanchard, Louisiana and Stephens, Arkansas*, Memorandum Opinion and Order, 10 FCC Rcd 9828 (1995) (decision based on population difference of 38 people).

U.S. Census population of 2,235).⁷ For these reasons, Benavides will continue in the application process by filing a complete FCC Form 301 application.⁸

Conclusion / Action. Accordingly, for the above reasons, IT IS ORDERED that Benavides, within 60 days of the date of this letter, is to file a complete FCC Form 301 long-form application in connection with his application for a construction permit for an AM broadcast station at Panhandle, Texas (File No. BNP-20040129ABQ), pursuant to the procedures set forth in the Commission's Rules.⁹ With his application, Benavides must simultaneously submit the required filing fee for a new commercial AM radio station and an FCC Form 159, Remittance Advice.

The facilities proposed in the FCC Form 301 must comply with all applicable AM rules. Benavides must demonstrate that the proposed facility protects existing stations and earlier filed applications, and that the daytime and nighttime facilities comply with principal city coverage requirements.¹⁰ Any differences between the tech box proposal filed during the AM Auction No. 84 filing window and the complete FCC Form 301 must be minor changes, as defined by the applicable AM service rules,¹¹ and must not create new application conflicts.

The complete FCC Form 301 application must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic forms system. For information regarding electronic application filing, refer to the April 28, 2000, Public Notice, *Mass Media Bureau Implements Consolidated Database System (CDBS) Electronic Filing of FCC Forms 301, 302, 314, 315, 316, and 347*. When filing the complete FCC Form 301, an applicant must select "Long Form Application for AM Auction No. 84" on the Pre-form for Form 301 (Question 2 – Application Purpose). In addition, the CDBS file number previously issued to the tech box submission filed in the AM Auction No. 84 filing window must be entered on the Pre-form in the field "Eng. Proposal File Number." Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing website at <http://www.fcc.gov/mb/elecfile.html>. For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2662.

⁷ Furthermore, we find that Panhandle, Texas, constitutes a community suitable for licensing purposes. See *Arnold and Columbia, California*, Memorandum Opinion and Order, 7 FCC Rcd 6302, 6303 (MMB 1992).

⁸ After the FCC Form 301 is filed, the staff will conduct a complete legal and technical analysis. We will issue Public Notices entitled "Broadcast Applications," announcing AM auction applications determined to be acceptable for filing. These notices will be generated by the Consolidated Database System ("CDBS"). Petitions to deny an FCC Form 301 application, must be filed within 10 days following release of the Broadcast Applications Public Notice announcing acceptance of the application at issue. *Broadcast First Report and Order* at 15985. The staff will dismiss the applications filed by Powell Meredith (File No. BNP-20040128ART) and LPF (File No. BNP-20040130BKN) upon action taken on the application filed by Benavides.

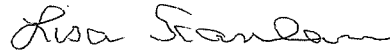
⁹ See 47 C.F.R. §§ 0.401(b), 1.1104, 1.1109, 73.5005(d), and 73.3512.

¹⁰ See *id.* §§ 73.24, 73.37, and 73.182.

¹¹ *Id.* § 73.3571.

The staff will return applications not submitted in accordance with the procedures described above. Failure to timely file the complete FCC Form 301 application, **on or before March 25, 2010**, will result in dismissal of the tech box proposal filed during the AM Auction No. 84 filing window for failure to prosecute, pursuant to Section 73.3568 of the Commission's Rules.¹²

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau



¹² *Id.* § 73.3568.